



fisherphillips.com

June 22, 2020

**VIA ELECTRONIC MAIL AND  
FEDERAL EXPRESS**

Ms. Princy Doss  
Director of Policy, Planning and Public Information  
Virginia Department of Labor and Industry  
600 E. Main Street, Suite 207  
Richmond, VA 23219  
[princy.doss@doli.virginia.gov](mailto:princy.doss@doli.virginia.gov)

Mr. Jay Withrow, Director  
Division of Legal Support, VPP, ORA, OPPPI, and OWP  
Virginia Department of Labor and Industry  
600 E. Main Street, Suite 207  
Richmond, VA 23219  
[jay.withrow@doli.virginia.gov](mailto:jay.withrow@doli.virginia.gov)

**Re: Comments of the Virginia Poultry Federation Regarding Adoption of  
Emergency Temporary Standard/Regulation pertaining to SARS-  
CoV-2 Virus That Causes COVID-19, § 16 VAC 25-220**

Dear Ms. Doss and Mr. Withrow:

As you know, this Firm represents the Virginia Poultry Federation (Federation) with respect to the referenced matter. By this letter, the Federation submits its<sup>1</sup> public comments to the proposed emergency occupational safety and health regulation pertaining to Novel Coronavirus disease 2019 (COVID-19).

**Bottom Line**

---

<sup>1</sup> This Firm does not represent the individual members of the Federation. This correspondence does not constitute as a statement of admission on behalf of the individual members.

**Fisher & Phillips LLP**

Atlanta • Baltimore • Bethesda • Boston • Charlotte • Chicago • Cleveland • Columbia • Columbus • Dallas • Denver • Detroit • Fort Lauderdale • Gulfport  
Houston • Irvine • Kansas City • Las Vegas • Los Angeles • Louisville • Memphis • Nashville • New Jersey • New Orleans • New York • Orlando • Philadelphia  
Phoenix • Pittsburgh • Portland • Sacramento • San Diego • San Francisco • Seattle • Tampa • Washington, DC

**Charlotte**

Suite 2020  
227 West Trade Street (28202)  
Post Office Box 36775  
Charlotte, NC 28236  
(704) 334-4565 Tel  
(704) 334-9774 Fax

**Writer's Direct Dial:**

704-778-4164

**Writer's E-mail:**

[t Vance@fisherphillips.com](mailto:t Vance@fisherphillips.com)

Ms. Princy Doss  
Mr. Jay Withrow  
Virginia Department of Labor and Industry  
June 22, 2020  
Page 2

The Federation urges the Virginia Department of Labor and Industry (DOLI) not to promulgate the proposed emergency regulations because the regulations are not necessary or well-advised. While the public health risks associated with the COVID-19 pandemic are real and serious, scientific understanding of the disease is still rapidly progressing. Both the Occupational Safety and Health Administration (OSHA) and the Centers for Disease Control and Prevention (CDC) have issued guidance, updated with regularity as new information is learned about the disease, to employers regarding preventative actions that can be taken to protect worker health and safety and mitigate against transmission of the disease at workplaces. The Federation urges DOLI to continue this approach, which has been effective to date. The Federation does not believe that issuance of a temporary regulation—which in fact is little more than a summary of existing OSHA and CDC guidance already in effect—will provide employers the flexibility to protect their workers as new information about COVID-19 is learned. The pandemic requires swift action and flexibility; enacting a premature regulation prevents that from occurring.

**I. Worker safety is our members' number one priority, and our members have taken a broad array of steps to combat COVID-19.**

The public health risks associated with the COVID-19 pandemic are not in dispute, and safety of the Federation's members are its members' highest priority.

Throughout the pandemic, the Federation's members have been directed by the immensely helpful guidance issued jointly by the Centers for Disease Control and Prevention (CDC) and the Occupational Safety and Health Administration, "Meat and Poultry Processing Workers and Employers: Interim Guidance from CDC and the Occupational Safety and Health Administration," ("Interim Guidance") available at: <https://www.cdc.gov/coronavirus/2019-ncov/community/organizations/meat-poultry-processing-workers-employers.html>. The Virginia Department of Health has issued similar interim guidance for meat and poultry processing facilities. See "VDH Interim Guidance for Implementing Safety Practices for Critical Infrastructure Workers (Non-Healthcare) during Widespread Community Transmission in Virginia: Meat and Poultry Processing Foods," available at: <https://www.vdh.virginia.gov/coronavirus/vdh-interim-guidance-for-implementing-safety-practices-for-critical-infrastructure-workers-non-healthcare-during-widespread-community-transmission-in-virginia-meat-and-poultry-processing-focu/>.

The CDC's Interim Guidance, as well as the VDH's, recommends employers create a COVID-19 assessment and control plan that considers various engineering, administrative, and PPE controls that employers in the poultry industry may use to keep their workplaces safe.

Most or all of the controls and guidelines set forth by the Interim Guidance include the following measures: (1) implementing social distancing where feasible; (2) implementing engineering, administrative, or PPE controls where social distancing is not feasible; (3) encouraging increased hygiene for workers; (4) increasing sanitation and disinfection of workplaces; (5) providing cloth face coverings to workers; and (6) communicating with workers regarding these safety practices. Additional guidance has been issued by OSHA regarding when COVID-19 cases must be recorded on an employer's OSHA 300 log, found here: <https://www.osha.gov/memos/2020-04-10/enforcement-guidance-recording-cases-coronavirus-disease-2019-covid-19>.

Of particular note, the Interim Guidance, like many OSHA standards, is performance oriented. Rather than set forth a one-size-fits-all approach, such as regulation may effect, the Interim Guidance allows employers within the poultry industry to determine how best to achieve worker safety within the framework set forth by OSHA and the CDC. Accordingly, the Interim Guidance recommends employers create a COVID-19 assessment and control plan that considers various engineering, administrative, and PPE controls that are best suited for each employer's particular worksites.

The Federation's members have taken these recommendations to heart. During the pandemic, the Federation's members have worked closely with local health departments, the Virginia Department of Health (VDH), and the CDC to implement best practices pursuant to the CDC's and OSHA's guidelines to maintain safe workplaces and prevent and mitigate the spread of COVID-19. Indeed, at the Governor's request, a CDC team was deployed to the Delmarva Peninsula to assist poultry processing facilities with implementation of safety protocols.

Through this coordination, the Federation's members have implemented social distancing protocols, engineered physical distancing protections where feasible, provided face coverings to workers, enhanced sanitization activities, have processes in place if an employee becomes infected with COVID-19, and communicated with their workforces at great length regarding safety policies that are being implemented. Some of the measures that members have taken include:

#### *Engineering Controls*

- Erection of physical barriers, such as plastic partitions and curtains, between workers when social distancing is not feasible, including on production lines.
- Erection of physical barriers, such as plastic partitions in break rooms and cafeterias.

- Erection of additional break space, including outside tents, to promote social distancing.

#### *Administrative Controls*

- Implementation of social distancing of at least six (6) feet wherever feasible, including in cafeterias and break rooms, on production lines, and other locations throughout facilities.
- Implementation of health and temperature screenings of all employees upon entrance.
- Increased sanitation and disinfection measures throughout facilities, with added measures for high-touched areas and areas where a potential COVID-19 positive employee may have been located.
- Adoption of travel and visitor restrictions.
- Promotion of working remotely where possible.
- Provision of increased flexibility regarding attendance and leave policies.
- Staggering of start times, shifts, and breaks.
- Placing signage throughout workplaces regarding preventative measures taken.
- Investigation and contact tracing for any suspected or confirmed COVID-19 employee.
- Establishment of multiple channels of communication for workers to share safety concerns with company management.

#### *“PPE” Controls*

- Provision of face coverings to employees at no cost to employees.<sup>2</sup>

It is not just the Federation’s members who have taken action to prevent the spread of COVID-19 at workplaces throughout the Commonwealth. Employers throughout the Commonwealth have taken action to follow OSHA and CDC guidance. As a result, the number of COVID-19 infections has steadily decreased in the Commonwealth since mid-May. *See* <https://www.vdh.virginia.gov/coronavirus/>.

---

<sup>2</sup> Cloth face coverings are not PPE by definition. PPE is designed to prevent exposure to the user of a workplace hazard. The CDC has recommended cloth face coverings to prevent the user from exposing others to COVID-19. *See* Interim Guidance (“Cloth face coverings are intended to protect other people—not the wearer. **Cloth face coverings are not PPE.**”).

Ms. Princy Doss  
Mr. Jay Withrow  
Virginia Department of Labor and Industry  
June 22, 2020  
Page 5

## **II. Additional regulations are not necessary.**

The emergency regulations proposed by DOLI are not necessary given the existence of current, effective guidance promulgated by OSHA and the CDC.

### **A. Existing OSHA Standards are Enforceable and Sufficient**

The United States Secretary of Labor, Eugene Scalia, recently addressed a similar request for additional regulations made by the President of the AFL-CIO, Richard Trumka. But as Secretary Scalia noted, employers are already “implementing measures to protect workers” and “employers who fail to take steps are likely violating existing OSHA obligations.” Letter of Eugene Scalia to Richard L. Trumka, April 30, 2020; available at: [https://www.uschamber.com/sites/default/files/dol\\_response\\_letter\\_-\\_covid-19\\_-\\_afl-cio\\_04.30.20.pdf](https://www.uschamber.com/sites/default/files/dol_response_letter_-_covid-19_-_afl-cio_04.30.20.pdf).

Indeed, workers throughout the Commonwealth are already protected by existing occupational safety and health regulations. Virginia employers, must, under existing OSHA statutes and regulations, assess their workplaces to determine the existence of hazards and provide necessary PPE to workers. 29 C.F.R. § 1910.132. They must provide respirators and eye and face protection where required. 29 C.F.R. §§ 1910.133-134. They must ensure proper sanitation for their facilities. 29 C.F.R. § 1910.141.

Perhaps most importantly, Virginia employers have a general duty under the Occupational Safety and Health Act of 1970 to keep their workplaces free from recognized hazards that cause or are likely to cause death or serious physical harm (the general duty clause). 29 U.S.C. § 654(a)(2) (*see* Va. Code § 40.1-51.1A- “It shall be the duty of every employer to furnish to each of his employees safe employment and a place of employment which is free from recognized hazards that are causing or are likely to cause death or serious physical harm to his employees, and to comply with all applicable occupational safety and health rules and regulations promulgated under this title.”). Each of these regulations and statutes is clear and enforceable. If a Virginia employer failed to take action to protect its workers from COVID-19, as recommended by OSHA or the CDC, DOLI’s Occupational Safety and Health Division (VOSH) could cite the company for violation of the general duty clause or another existing regulation. *See* Scalia Letter (noting that noncompliance with OSHA’s and the CDC’s guidance to date “support[s] an enforcement action under the general duty clause”).

While DOLI states in the Briefing Package for the June 24, 2020 public hearing on the emergency regulations that OSHA’s and the CDC’s guidance on COVID-19 for employers may

not be enforceable against employers under the general duty clause (see pp. 45-49), this assessment is contradicted by Secretary Scalia’s own assessment of the applicability of the general duty clause. *See Scalia Letter.*

B. There is insufficient factual foundation to regulate beyond OSHA’s and the CDC’s existing guidance.

The novel coronavirus is what its name states: novel. Only five months ago did the World Health Organization identify the new respiratory illness found in Wuhan, China as a new coronavirus. As the virus has spread globally over the succeeding months, scientists have raced to gain important knowledge about its symptoms and transmission. We are still learning on a daily basis more information about how the virus is spread, what measures may or may not be effective to slow or prevent infection, and what that all means to individuals and employers across the country. The CDC, OSHA, and VDH’s guidance to employers has kept abreast with the best available science. There is no scientific basis for regulating beyond what these agencies have recommended to date.

C. The proposed emergency regulations add nothing to existing guidance.

Indeed, the emergency regulations proposed by DOLI do not go beyond what has been recommended by the CDC and OSHA. As the following chart demonstrates, each of the general requirements under the emergency regulations, in § 40 of the proposed regulation, already are in place under existing guidance:

<u>VOSH Emergency Regulation Section</u>	<u>VOSH Emergency Regulation</u>	<u>Existing Guidance</u>	<u>Existing Guidance</u>	<u>Existing Guidance</u>
§ 40(A)(1) - <i>Exposure assessment and determinations, notification requirements, and employee access to exposure and medical records</i>				

<p>§ 40(A)(1)</p>	<p><i>Conduct hazard assessment and classify each employee according to hazards for "very high," "high," "medium," or "lower" risk levels of exposure</i></p>	<p><a href="#"><u>OSHA - Guidance on Preparing Workplaces for COVID-19</u></a>: Classifying Worker Exposure to SARS-CoV-2 - OSHA has divided job tasks into four risk exposure levels: very high, high, medium, and lower risk.</p>		
<p>§ 40(A)(2)</p>	<p><i>Employers shall inform employees of the methods of and encourage employees to self-monitor for signs and symptoms of COVID-19 if they suspect possible exposure or are experiencing signs of an oncoming illness.</i></p>	<p><b>OSHA - Guidance on Preparing Workplaces for COVID-19</b>: Employers should inform and encourage employees to self-monitor for signs and symptoms of COVID-19 if they suspect possible exposure.</p>		
<p>§ 40(A)(3)(a)</p>	<p><i>"Serologic test results shall not be used to make decisions about returning employees to work."</i></p>	<p><a href="#"><u>CDC Interim Guidelines for COVID-19 Antibody Testing</u></a>: "Serologic test results should not be used to make decisions about returning persons to the workplace."</p>		
<p>§ 40(A)(3)(b)</p>	<p><i>"Serologic test results shall not be used to make decisions concerning employees...about grouping, residing in or being admitted to congregate settings, such as schools, dormitories, etc."</i></p>	<p><b>CDC Interim Guidelines for COVID-19 Antibody Testing</b>: "Serologic test results should not be used to make decisions about group persons residing in or being admitted to congregate settings, such as schools, dormitories, or correctional facilities."</p>		

<p>§ 40(A)(3)(c)</p>	<p><i>"Employees who test positive by serologic testing and were not otherwise previously classified as known or suspected COVID-19 may go to work provided they are not COVID-19 symptomatic and follow general recommendations to prevent infection with SARS-CoV-2 while at work..."</i></p>	<p><b>CDC Interim Guidelines for COVID-19 Antibody Testing:</b> "Asymptomatic persons who test positive by serologic testing and who are without recent history of a COVID-19 compatible illness have a low likelihood of active infection and should follow general recommendations to prevent infection with SARS-CoV-2 and otherwise continue with normal activities, including work."</p>		
<p>§ 40(A)(3)(d)</p>	<p><i>"There shall be no change in use of PPE by employees who test positive for SARS-CoV-2 antibodies."</i></p>	<p><b>CDC Interim Guidelines for COVID-19 Antibody Testing:</b> "There should be no change in clinical practice or use of personal protective equipment (PPE) by health care workers and first responders who test positive for SARS-CoV-2 antibody."</p>		
<p>§ 40(A)(4)</p>	<p><i>"Employers shall develop and implement policies and procedures for employees to report when they are experiencing symptoms consistent with COVID-19. Such employees shall be designated by the employer as 'suspected COVID-19.'"</i></p>	<p><b>OSHA - Guidance on Preparing Workplaces for COVID-19:</b> "Employers should develop policies and procedures for employees to report when they are sick or experiencing symptoms of COVID-19."</p>	<p><a href="#"><u>CDC Interim Guidance for Business and Employers Responding to Coronavirus Disease 2019</u></a> - "Create and test communication systems that employees can use to self-report if they are sick and that you can use to notify employees of exposures and closures."</p>	



<p>§ 40(A)(5)</p>	<p><i>"Employers shall not permit known COVID-19 employees or other persons to report to or be allowed to remain at work or on a job site until cleared for return to work or the job site."</i></p>	<p><b><u>Guidance for Meat and Poultry Processing Workers and Employers:</u></b> "Workers with COVID-19 who have symptoms and have stayed home (home isolated) should not return to work until they have met the criteria to discontinue home isolation, and have consulted with their healthcare providers and state and local health departments."</p>		
<p>§ 40(A)(5)</p>	<p><i>Employers should "ensure that sick leave policies are flexible and consistent with public health guidance and that employees are aware of these policies."</i></p>	<p><b>OSHA - Guidance on Preparing Workplaces for COVID-19:</b> "Ensure that sick leave policies are flexible and consistent with public health guidance and that employees are aware of these policies."</p>	<p><b>Guidance for Meat and Poultry Processing Workers and Employers:</b> "Analyze sick leave policies and consider modifying them to make sure that ill workers are not in the workplace. Make sure that employees are aware of and understand these policies."</p>	
<p>§ 40(A)(6)</p>	<p><i>"Employers shall discuss with subcontractors, and companies that provide contract or temporary employees about the importance of suspected COVID-19 and known COVID-19 subcontractor, contract, or temporary employees staying home and encourage them to develop non-punitive sick leave policies."</i></p>	<p><b>OSHA - Guidance on Preparing Workplaces for COVID-19:</b> "Talk with companies that provide your business with contract or temporary employees about the importance of sick employees staying home and encourage them to develop non-punitive leave policies."</p>		

<p>§ 40(A)(7)</p>	<p><i>Informing employees of positive test of other employees.</i></p>	<p><b>Guidance for Meat and Poultry Processing Workers and Employers:</b> "If a worker is confirmed to have COVID-19, employers should inform anyone they have come into contact with of their possible exposure to COVID-19 in the workplace..."</p>	<p><a href="#"><u>CDC Interim Guidance for Business and Employers Responding to Coronavirus Disease 2019</u></a> - "Inform employees of their possible exposure to COVID-19 in the workplace..."</p>	
<p>§ 40(A)(8)</p>	<p><i>"Each employer shall ensure employee access to SARS-CoV-2 and COVID-19 related exposure and medical records in accordance with the standard applicable to its industry...."</i></p>	<p><a href="#"><u>1910.1020 - Access to Employee Exposure and Medical Records</u></a></p>		
<p>§ 40(B) - Return to Work</p>	<p><i>"Employers shall develop and implement policies and procedures for known COVID-19 or suspected COVID-19 employees to return to work using either a symptom-based or test-based strategy..."</i></p>	<p><b>CDC Interim Guidance for Business and Employers Responding to Coronavirus Disease 2019</b> - "Sick employees should follow CDC recommended steps. Employees should not return to work until the criteria to discontinue home isolation are met, in consultation with healthcare providers."</p>	<p><a href="#"><u>Discontinuation of Isolation for Persons with COVID-19 Not in Healthcare Settings</u></a> - Symptom-based strategy and Test-based strategy</p>	
<p>§ 40(C) - Physical Distancing</p>	<p><i>"Unless otherwise provided in this standard/regulation, employers shall ensure that employees observe physical distancing while on the job and during paid breaks on the employer's property."</i></p>	<p><b>CDC Interim Guidance for Business and Employers Responding to Coronavirus Disease 2019</b> - "Establish policies and practices for social distancing. Alter your workspace to help workers and customers maintain social distancing..."</p>	<p><b>Guidance for Meat and Poultry Processing Workers and Employers:</b> "Employers should do the following to promote social distancing..."</p>	

<p><b>§ 40(D) - Limit Access to common areas</b></p>	<p><i>"Access to common areas, breakrooms, or lunchrooms shall be closed or controlled."</i></p>	<p><b>Guidance for Meat and Poultry Processing Workers and Employers:</b> "Establish protocols and provide supplies to increase the frequency of sanitization in work and common spaces....Remove or rearrange chairs and tables, or add partitions to tables, in break rooms and other areas workers may frequent to increase worker separation."</p>	<p><b>CDC Interim Guidance for Business and Employers Responding to Coronavirus Disease 2019 -</b> "Close or limit access to common areas where employees are likely to congregate and interact."</p>	
<p><b>§40(F)</b></p>	<p><i>"Where the nature of an employee's work or the work area does not allow them to observe physical distancing requirements, employers shall ensure compliance with respiratory protection and personal protective equipment standards applicable to its industry..."</i></p>	<p><b>Guidance for Meat and Poultry Processing Workers and Employers:</b> "Cloth face coverings may be especially important when social distancing is not possible or feasible based on working conditions."</p>		
<p><b>§40(I)</b></p>	<p><b>Sanitation and Disinfecting Requirements</b></p>	<p><a href="#">1910.141 - Sanitation Standard</a></p>	<p><b>Guidance for Meat and Poultry Processing Workers and Employers:</b> Cleaning and disinfection in meat and poultry processing</p>	<p><a href="#">CDC Cleaning and Disinfecting Your Facility (April 14, 2020)</a></p>
<p><b>§40(K)</b></p>	<p><i>"...when engineering, work practice, and administrative controls are not feasible or do not provide sufficient protection, employers shall provide personal protective equipment to their employees and ensure its proper use..."</i></p>	<p><a href="#">1910.132 - PPE Standard</a></p>	<p><a href="#">1910.134 - Respiratory Protection</a></p>	<p><a href="#">OSHA - Guidance on Preparing Workplaces for COVID-19: Personal Protective Equipment (PPE)</a></p>

<p><b>§ 60 Requirements for hazards or jobs tasks classified at "medium" exposure risk.</b></p>		<p><b>OSHA - Guidance on Preparing Workplaces for COVID-19: Jobs Classified at Medium Exposure Risk: What to do to Protect Workers</b></p>	<p><b>Guidance for Meat and Poultry Processing Workers and Employers: Controls</b></p>	
<p><b>§ 60(A)(1)</b></p>	<p><i>"Ensure that air-handling systems where installed are appropriate to address the SARS-CoV-2 and COVID-19 related hazards and job tasks that occur at the workplace..."</i></p>	<p><b>OSHA - Guidance on Preparing Workplaces for COVID-19:</b> "Engineering controls for SARS-CoV-2 include: installing high-efficiency air filters, increasing ventilation rates in the work environment."</p>		
<p><b>§ 60(A)(2)</b></p>	<p><i>"To the extent feasible, employers shall install physical barriers, such as clear plastic sneeze guards, where such barriers will aid in mitigating the spread of SARS-CoV2 and COVID-19 virus transmission."</i></p>	<p><b>OSHA - Guidance on Preparing Workplaces for COVID-19:</b> "Install physical barriers, such as clear plastic sneeze guards, where feasible."</p>		
<p><b>§ 60(B)</b></p>	<p><i>Administrative and Work Practice Controls - Including prescreening employees, providing face coverings, implement flexible worksites and work hours, increase physical distancing.</i></p>	<p><b>OSHA - Guidance on Preparing Workplaces for COVID-19:</b> "Employers should explore whether they can establish policies and practices, such as flexible worksites (e.g., telecommuting) and flexible work hours (e.g., staggered shifts), to increase the physical distance among employees..."</p>		
<p><b>§ 60(C)</b></p>	<p><i>Personal Protective Equipment: Employers shall assess the workplace and use the types of PPE that will protect employees.</i></p>	<p><a href="#">1910.132 - PPE Standard</a></p>	<p><a href="#">OSHA - Guidance on Preparing Workplaces for COVID-19: Personal Protective Equipment (PPE)</a></p>	

<p><b>§ 70 Infectious Disease Preparedness and Response Plan</b></p>	<p><i>"Employers with hazards or job tasks classified as: 'Medium' with eleven (11) or more employees shall develop and implement a written Infectious Disease Preparedness and Response Plan."</i></p>	<p><b>Guidance for Meat and Poultry Processing Workers and Employers:</b> Create a COVID-19 Assessment and Control Plan</p>	<p><b>OSHA - Guidance on Preparing Workplaces for COVID-19:</b> "If one does not already exist, develop an infectious disease preparedness and response plan that can help guide protective actions against COVID-19."</p>	
<p><b>§ 90 Discrimination against an employee for exercising rights under this standard/regulation is prohibited.</b></p>		<p><u><b>Guidance on Returning to Work:</b></u> "Anti-retaliation, including practices for ensuring that no adverse or retaliatory action is taken against an employee who adheres to these guidelines or raises workplace safety and health concerns."</p>		

D. A static, one-size-fits-all approach is not the best course of action to mitigate COVID-19 risks in the workplace.

The guidance by the CDC, OSHA, and VDH to date has been tailored to the needs of individual industry sectors. Such tailored guidance is, as Secretary Scalia put it, “far more information for workers and companies about the steps to be taken in *their* workplaces” than the one-size-fits-all approach provided by enacting emergency regulations. *Scalia Letter*.

It makes little sense to enact static regulations that may need to be adapted shortly (and perhaps several times) for rapidly changing science. As but one example, many employers screen employees using temperature checks (an optional practice under the CDC’s guidance) because one of the common symptoms of COVID-19 is fever. Similarly, the emergency regulations require employers to prescreen or survey their employees prior to the start of each shift. *See* Emergency Regulation at § 60(B)(1)(a). That said, multiple studies have found that only a minority of COVID-19 patients who were hospitalized had a fever. *See*

Ms. Princy Doss  
Mr. Jay Withrow  
Virginia Department of Labor and Industry  
June 22, 2020  
Page 14

<https://www.nytimes.com/2020/04/23/health/coronavirus-patients-risk.html>. The utility of temperature screenings additionally is called into question because many COVID-19-positive individuals are asymptomatic. Whether the Commonwealth should require employers to screen their workers with temperature checks given this limited utility, while also considering the risk to the temperature taker, may ultimately be beneficial, but it is a decision that should be made in the ordinary rulemaking process where all available facts and viewpoints can be reviewed in a considered manner.

### III. Conclusion

The current approach, as taken by OSHA, the CDC, and VDH, is the best way forward. The guidance issued by these agencies has been well-considered and provides Virginia employers with the flexibility to adapt to evolving knowledge regarding the transmission of the novel coronavirus and effective means and methods to slow or prevent transmission. The Federation's members have developed extensive relationships with various Commonwealth and federal officials that have proved effective in limiting worker exposure to COVID-19 in members' workplaces. To the extent any employer does not adhere to current guidelines or existing OSHA regulations, those employers are already subject to enforcement actions, including fines.

We welcome additional assistance from our partners in government as we combat this pandemic together. What is not needed, however, is an additional layer of regulations, borne outside the traditional rulemaking process that lacks scientific foundation and is based upon a misunderstanding of the regulatory environment already in place.

If you have any questions or need additional information, please let me know. Thank you for your consideration and mutual commitment to workplace safety.

Sincerely



Travis W. Vance  
Partner  
For FISHER & PHILLIPS LLP

cc: Governor Ralph Northam (via E-Mail)  
M. Normal Oliver, MD, State Health Commissioner, Virginia Department of Health (via U.S. Mail)

Ms. Princy Doss  
Mr. Jay Withrow  
Virginia Department of Labor and Industry  
June 22, 2020  
Page 15

Mark R. Herring, Attorney General (via E-Mail)  
C. Ray Davenport, Commissioner, Virginia DOLI (via U.S. Mail)  
Ronald L. Graham, VOSH Health Director (via U.S. Mail)  
Secretary Eugene Scalia, Department of Labor (via U.S. Mail)  
Loren Sweatt, Acting Assistant Secretary of Labor-OSHA (via U.S. Mail)  
Jessica Killeen, Deputy Counsel to the Governor (via U.S. Mail)  
Senator Mark Warner (via U.S. Mail)  
Senator Tim Kaine (via U.S. Mail)  
Representative Elaine Luria (via U.S. Mail)  
Representative Ben Cline (via U.S. Mail)  
W. Lynwood Lewis, Jr., Senate of Virginia (via E-Mail)  
Mark Obenshain, Senate of Virginia (via E-Mail)  
Chris Runion, Virginia House of Delegates (via E-Mail)  
Robert S. Bloxom, Jr., Virginia House of Delegates (via E-Mail)  
Tony Wilt, Virginia House of Delegates (via E-Mail)  
C. Renata Major, Chair, Accomack County Board of Supervisors (via E-Mail)  
Sally Wolf Garrison, Rockingham County Board of Supervisors (via U.S. Mail)  
William B. Kyger, Rockingham County Board of Supervisors (via U.S. Mail)  
Salvador Romero, Vice-Mayor, Harrisonburg (via E-Mail)  
Deanna Reed, Mayor, Harrisonburg (via E-Mail)  
Hobey Bauhan, President, Virginia Poultry Federation (via E-Mail)